

## Agricultural Marketing Service, USDA

## § 47.3

(d) *Service* means the Agricultural Marketing Service, United States Department of Agriculture.

(e) *Associate Administrator* means the Associate Administrator of the Service, or any officer or employee of the Service to whom authority has heretofore lawfully been delegated, or to whom authority may hereafter lawfully be delegated, to act in his or her stead.

(f) *General Counsel* means the General Counsel of the Department or any employee of the Office of the General Counsel to whom the authority to act in his or her stead has heretofore been or may hereafter be delegated.

(g) *Fruit and Vegetable Programs* means the Fruit and Vegetable Programs of the Agricultural Marketing Service.

(h) *Deputy Administrator* means the Deputy Administrator of the Fruit and Vegetable Programs or any officer or employee of the Fruit and Vegetable Programs to whom authority has heretofore lawfully been delegated, or to whom authority may hereafter lawfully be delegated by the Deputy Administrator, to act in his stead.

(i) *Examiner*. In connection with reparation proceedings, the term “examiner” is synonymous with “presiding officer” and means any attorney employed in the Office of the General Counsel of the Department, or in connection with reparation proceedings conducted pursuant to the documentary procedure in § 47.20, the term “examiner” may mean any other employee of the PACA Branch whose work is reviewed by an attorney employed in the Office of the General Counsel of the Department.

(j) *Examiner’s report*. In connection with reparation proceedings, “examiner’s report” means the examiner’s report to the Secretary, and includes the examiner’s proposed (i) findings of fact and conclusions with respect to all material issues of fact, law or discretion, as well as the reasons or basis therefore, (ii) order and (iii) rulings on findings, conclusions and orders submitted by the parties.

(k) *Hearing* means that part of the proceeding which involves the submission of evidence and may or may not include an oral hearing.

(l) *Hearing Clerk* means the Hearing Clerk, United States Department of Agriculture, Washington, DC 20250.

(m) *Disciplinary proceeding* means any proceeding (other than a reparation proceeding) arising under the Act, in which proceeding it is required by law that the order or other determination duly issued shall be made only after an opportunity for a hearing, and, if a hearing be held, only upon the basis of a record made in the course of such hearing.

(n) *Reparation proceeding* means a proceeding in which money damages are claimed and in which the Department is not a party.

(o) *Party* includes the Department in those instances in which a proceeding is instituted upon moving papers filed by an officer or employee of the Department in an official capacity.

(p) *Complainant* means the party upon whose moving paper the proceeding is instituted.

(q) *Respondent* means the party proceeded against, whether the proceeding is instituted by the Department or by a private person.

(r) *Moving paper* means any formal complaint, petition, or order to show cause, by virtue of which a proceeding under the Act is instituted.

(s) *Mail* means to deposit an item in the United States Mail with postage affixed and addressed as necessary to cause it to be delivered to the address shown by ordinary mail, or by certified mail or registered mail if specified, or to cause a properly addressed item to be delivered by a commercial or private mail delivery service to the address shown.

(t) *Re-mail* means to mail by ordinary mail to an address an item that has been returned after being sent to the same address by certified or registered mail or by a commercial or private mail delivery service.

[10 FR 2209, Feb. 27, 1945; 10 FR 8685, July 13, 1945, as amended at 11 FR 224, Jan. 4, 1946; 12 FR 5483, Aug. 13, 1947; 19 FR 57, Jan. 6, 1954; 38 FR 30445, Nov. 5, 1973; 56 FR 174, Jan. 3, 1991; 60 FR 8459, Feb. 14, 1995; 64 FR 38105, July 15, 1999]

### § 47.3 Institution of proceedings.

(a) *Informal complaints*. (1) Any interested person (including any officer or

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agency of any State or Territory having jurisdiction over commission merchants, dealers, or brokers in such State or Territory, and any employee of the Department) desiring to complain of any violation of any provision of the Act by any commission merchant, dealer, or broker may file with the Deputy Administrator an informal complaint. Informal complaints may be made the basis of either a disciplinary complaint, or a claim for damages, or both. If the informal complaint is to be made the basis of a claim for damages, it must be received by the Deputy Administrator within 9 months after the cause of action accrues; if the informal complaint is not to be made the basis of a claim for damages, it may be filed at any time within 2 years after the violation of the act occurred: *Provided*, That the 2-year limitation herein prescribed shall not apply to complaints charging flagrant or repeated violations of the act.

(2) Informal complaints may be made in writing by telegram, by letter, or by facsimile transmission, setting forth the essential details of the transaction complained of. So far as practicable, every such informal complaint shall state such of the following items as may be applicable:

(i) The name and address of each person and of the agent, if any, representing him in the transaction involved;

(ii) Quantity and quality or grade of each kind of produce shipped;

(iii) Date of shipment;

(iv) Carrier identification;

(v) Shipping and destination points;

(vi) If a sale, the date, sale price, and amount actually received;

(vii) If a consignment, the date, reported proceeds, gross and net;

(viii) Amount of damages claimed, if any; and

(ix) Statement of other material facts including terms of contract.

(3) The informal complaint should, so far as practicable, be accompanied by true copies of all available papers relating to the transaction complained about, including shipping documents, letters, telegrams, invoices, manifests, inspection certificates, accounts sales, and any special contracts or agreements.

(4) The informal complaint shall be accompanied by a filing fee of \$60 as required by the Act.

(b) *Investigations and disposition of informal complaints.* (1) Upon receipt of all the information and supporting evidence submitted by the person filing the informal complaint, the Deputy Administrator shall cause such investigation to be made as, in the Deputy Administrator's opinion, is justified by the facts. If such investigation discloses that no violation of the Act has occurred, no further action shall be taken and the person filing the informal complaint shall be so informed.

(2) If the statements in the informal complaint and the investigation thereunder seem to warrant such action, and, in any case except one of wilfulness or one in which public health, interest or safety otherwise requires, which may result in the suspension or revocation of a license, the Deputy Administrator, in an effort to effect an amicable or informal adjustment of the matter, shall give written notice to the person complained against of the facts or conduct concerning which complaint is made, and shall afford such person an opportunity, within a reasonable time fixed by the Deputy Administrator, to demonstrate or achieve compliance with the applicable requirements of the Act and regulations promulgated thereunder.

[10 FR 2211, Feb. 27, 1945, as amended at 12 FR 1025, Feb. 13, 1947; 56 FR 174, Jan. 3, 1991; 60 FR 8459, Feb. 14, 1995; 64 FR 38106, July 15, 1999]

#### § 47.4 Service and proof of service.

(a) *Who shall make service.* Copies of all documents or papers required or authorized by the rules in this part to be filed with the Fruit and Vegetable Programs shall be served on the parties by the Fruit and Vegetable Programs, and copies of all documents or papers required or authorized by the rules in this part to be filed with the Hearing Clerk shall be served on the parties by the Hearing Clerk, unless any such document or paper is served by some other employee of the Department, or by a U.S. Marshal or deputy marshal, or as